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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In re Petition of)

TRANSWORLD TELECOMMUNICATIONS, INC.)
and)
TRANSWORLD WIRELESS T.V. -)
TAMPA BAY, INC.)

File No. CSR-_____

Pursuant to Section 1.2 of the)
Commission's Rules for Declaratory)
Ruling)

**EXPEDITED HANDLING
REQUESTED**

To: Chief, Mass Media Bureau

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**PETITION FOR DECLARATORY RULING
REGARDING ISSUANCE OF TAX CERTIFICATES**

**TRANSWORLD TELECOMMUNICATIONS, INC.
and
TRANSWORLD WIRELESS T.V. -
TAMPA BAY, INC.**

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January 29, 1993

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**SUMMARY OF PETITION FOR DECLARATORY RULING
REGARDING ISSUANCE OF TAX CERTIFICATES**

Transworld Telecommunications, Inc., through its wholly-owned subsidiary Transworld Wireless TV - Tampa Bay, Inc. (collectively hereafter "TTI"), operates a wireless cable/SMATV (hereafter "wireless cable") system in the Tampa/St. Petersburg MSA, as well as a small franchised cable system in the adjoining Hernando County. TTI is majority-owned and -controlled by Mr. F. Lorenzo Crutchfield, Jr., an African-American.

TTI acquired these properties through a merger with WCTV/Tampa Bay, Inc. ("WCTV"), the former operator of these properties. WCTV was merged into and with TTI on December 3, 1992. TTI holds channel lease agreements from the various MDS, OFS and ITFS licensees, and owns the actual transmitting equipment through which these various licensees operate their respective stations. (TTI also owns the physical plant for the SMATV operations.) It is TTI that enters into contracts with the various programmers such as Showtime, ESPN, WTBS, etc. It is TTI that makes all programming choices for the wireless cable/SMATV system.

In this petition, TTI is seeking a declaratory ruling that those who have contributed equity to TTI to enable TTI to acquire the Tampa wireless cable/SMATV system and the Hernando County franchised cable system, will be entitled to a tax certificate from the Commission upon the future divestiture of their TTI shares acquired in exchange for such equity contributions, so long as at the time of such future divestiture: 1) TTI remains the operator

of the Tampa wireless cable system; and 2) TTI remains minority controlled. Additionally, TTI seeks a declaratory ruling that those who invest between now and December 2, 1993 (i.e., prior to the first anniversary of TTI's acquisition of the Tampa wireless cable system) will likewise be eligible for tax certificate treatment upon future divestiture of such TTI shares acquired in return for such investment, under the same two conditions set forth above.

The FCC has a longstanding policy of utilizing its tax certificate authority to encourage minority control of mass media programming, both in the broadcast and the franchised cable contexts. Given that both the Congress, in the 1992 Cable Act, and the Commission, in several recent MDS rulemakings, have now acknowledged wireless cable to be a third technology (along with broadcast and franchised cable) for providing mass media video programming to the home, it would appear that wireless cable systems are entitled to the same tax certificate treatment as the other two video technologies. Moreover, because both the Congress and the Commission have established the goal of encouraging wireless cable as a marketplace competitor to franchised cable and thereby the provider of a marketplace solution to the problem of franchised cable's market power, it is imperative that both franchised cable operators and wireless cable operators compete on a level playing field, including among other things a level tax certificate policy playing field.

Finally, if TTI is to succeed in making the Tampa wireless cable system a viable competitor to the franchised cable systems

operating in the Tampa MSA (which cable systems have much greater market share than does TTI and much greater market power at this time), TTI must be able to raise additional equity capital in the ensuing months in a timely manner. Because TTI is a public corporation which must obey various rules and regulations of the Securities Exchange Commission in making equity offerings, TTI must receive a ruling on this petition in an expeditious manner, if the ruling is to be of any practical utility.

For the foregoing reasons, TTI is requesting that the Commission declare that the investors in TTI be eligible for tax certificate treatment, and that the FCC issue that ruling as soon as possible so that TTI may begin its fund-raising efforts.

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PETITION FOR DECLARATORY RULING
REGARDING ISSUANCE OF TAX CERTIFICATES

Transworld Telecommunications, Inc. ("TTI-Parent") and Transworld Wireless T.V. - Tampa Bay, Inc. ("TWTV") (collectively hereafter, "TTI"), the operator of the wireless cable system at Tampa, Florida, by their attorneys and pursuant to Section 1.2 of the Commission's Rules, hereby respectfully request that the Commission issue a declaratory ruling respecting the eligibility of various investors in TTI-Parent to receive tax certificates from the Commission pursuant to Section 1071 of the Internal Revenue Code ("IRC"), 26 USC §1071, at the time that such investors divest their stock in TTI-Parent. The specific rulings requested are set forth with more particularity in Part II below.

Assuming a December 2, 1993 cutoff date for contribution of seed money to TTI (364 days after TTI's acquisition of the Tampa Bay wireless cable operator, as discussed below) and the need for substantial lead time in making either a public or private

securities offering, TTI requests a ruling as quickly as possible if it is to go forward raising equity funds consistent with Securities Exchange Commission ("SEC") rules utilizing documents which reference potential FCC tax certificate treatment for investors.

I. Background Facts

A. Formation of TTI and Current Structure.

TWTV is a wholly-owned subsidiary of TTI-Parent, which is, in turn, a public corporation. The Chairman of the Board and majority owner of TTI-Parent is Mr. F. Lorenzo Crutchfield, Jr., an African-American. Through his control of TTI-Parent, Mr. Crutchfield controls all of the TTI subsidiaries, including TWTV. TTI-Parent in its present form was created by the contribution via merger of Carolina Communications, Inc., a privately held company owned by Mr. Crutchfield, to a public shell corporation named Euripides Development Corporation, which Mr. Crutchfield immediately renamed "Transworld Telecommunications, Inc." after the merger. Mr. Crutchfield merged his company into this public shell in order to establish and capitalize a publicly-traded company through which he could realize his dream of establishing a minority-controlled operator of cable and wireless cable systems across the United States.

The above-referenced merger which created TTI-Parent in its present form was consummated on March 31, 1992. Having initially capitalized TTI-Parent by contributing his privately-held company, which had substantial assets and positive cash flow, Mr.

Crutchfield then set about assembling a management team and investigating potential acquisitions. When it appeared that additional capital would be required, Mr. Crutchfield made additional cash investments into TTI-Parent in 1991 and 1992, receiving newly-issued TTI-Parent stock in exchange therefor. Between March 31, 1992 and the present, Mr. Crutchfield has invested \$3,000,000 in cash and \$2,903,414¹ in terms of his privately-held, cash-flow-positive business into TTI, for a total equity capitalization on the part of Mr. Crutchfield of \$5,903,414.²

After investigation of potential acquisitions, Mr. Crutchfield decided that an appropriate first acquisition would be WCTV/Tampa Bay, Inc. ("WCTV"), the wireless cable operator in the Tampa Bay area of Florida. WCTV had approximately five thousand subscribers on its wireless cable/SMATV system. WCTV was also the holder of a small franchised cable system in a corner of Hernando County, Florida, serving 510 subscribers and passing 1,427 homes.

WCTV was the customer/programmer of the various MDS and OFS licensees, and the airtime lessee of the various ITFS licensees. WCTV paid for and owned the transmitting equipment, held the programming contracts, chose the programming, and did all

¹ Mr. Crutchfield's tax basis in his privately-held business was \$2,903,414. The market value of that business at the time of the contribution was \$5,250,000.

² That is, Mr. Crutchfield's basis in his TTI equity investment is \$5,903,414. By structuring the transaction as he did, Mr. Crutchfield was able to put \$8,250,000 in equity into TTI (\$3,000,000 cash plus a business worth \$5,250,000), and thereby increase TTI's chances of succeeding as a wireless cable operator.

marketing, billing, installation and subscriber servicing. Where WCTV served customers via SMATV rather than microwave, WCTV owned the cable facilities. Thus, WCTV was the operator of the system.

Acquisition of WCTV (on December 3, 1992) was accomplished by TTI-Parent creating a wholly-owned subsidiary, TWTV, and causing WCTV to be merged into and with TWTV such that the stockholders of WCTV received stock in TTI-Parent in return for tendering their stock in WCTV. Stated otherwise, the stockholders and debenture holders (and in one case a creditor)³ of WCTV contributed their ownership in WCTV (and in the case of the creditor, extinguished the claim) in return for stock in TTI-Parent in order to help fund TTI's acquisition of a wireless cable operation and to increase the equity capital base of that wireless cable operation.

As of the December 3, 1992 consummation date of the TWTV/WCTV merger, the combined wireless cable/SMATV/Hernando County-franchised cable system offered nineteen video channels, and had approximately 5,500 subscribers, of which less than 10% were subscribers on the franchised cable system in Hernando County. There is no prohibited cross-ownership, as all of the wireless cable/SMATV subscribers were in the Tampa MSA (i.e., outside Hernando County). It is in the Tampa MSA where WCTV competes with franchised cable multi-system operators such as Jones Intercable and Paragon, each of which has significantly greater market share than does TTI.

³ The creditor is Three Sixty Corp., the parent of the operator of the Corpus Christi wireless cable system. Three Sixty Corp. had assisted WCTV in constructing and operating the Tampa system.

TTI will need additional equity capital within the next year in order to assure the success of the Tampa Bay wireless cable operation, and to allow TTI to acquire additional wireless cable operations in other geographic areas. Therefore, TTI-Parent plans to issue additional stock in TTI-Parent to increase the overall equity capitalization. This new stock will be issued, and cash paid in, under one or more of the following circumstances:

1. A private placement;
2. A secondary public offering;
3. Exercise of currently outstanding TTI-Parent warrants held by various persons; or
4. Conversion of existing TTI debt into equity.

Currently, Mr. Crutchfield owns 75% of the outstanding common stock of TTI-Parent, and thereby controls 75% of the voting power TTI-Parent. No matter which of the above-referenced scenarios is utilized to increase the capitalization of TTI between now and December 2, 1993, Mr. Crutchfield will retain at least 51% of the voting power. Stated otherwise, under any circumstances Mr. Crutchfield will remain in voting control of TTI.

II. Rulings Being Requested.

Based upon the December 3, 1992 acquisition by TWTV of the Tampa Bay wireless cable system and Hernando County cable system, and upon the fact that TWTV is a wholly-owned subsidiary of TTI-Parent, the following investments qualify as "seed money" investments in a wireless cable operator, and any future divestitures of part or all of any of these seed money investments will qualify for a tax certificate so long as immediately after such divestiture TTI-Parent remains the owner of the Tampa Bay

wireless cable system and TTI-Parent remains minority-controlled:

- a) the capital invested to date in TTI-Parent by Mr. F. Lorenzo Crutchfield, Jr.;
- b) the TTI-Parent common and preferred stock issued to the WCTV stockholders and debenture holders, and to WCTV creditor Three Sixty Corp., between December 3, 1992 and December 2, 1993, under and pursuant to the TWTV/WCTV Merger Agreement;
- c) any other new stock issuance by TTI-Parent, where the cash is paid into TTI-Parent for newly-issued stock on or before December 2, 1993, whether issued pursuant to the exercise of warrants, a private placement, a new public offering, or an offering to existing stockholders.

As a hybrid CATV/SMATV/wireless cable operator, TTI already fits into the Commission's existing tax certificate policy with respect to cable television. TTI respectfully submits that wireless cable (including over-the-air transmission via MDS, OFS, or ITFS frequencies, and SMATV) service be treated the same as franchised cable television systems or broadcast stations for the purpose of the Commission's tax certificate policy as set forth in Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 F.C.C.2d 849, 52 R.R.2d 1301 (1982) ("1982 Policy Statement"), and in Policy Statement on Minority Ownership of Cable Television Facilities, 52 R.R.2d 1469 (1982) ("Cable Policy Statement"). As with broadcast licensees and cable franchisees, the wireless cable operator controls the choice of programming over its wireless cable system.

Because the ruling sought herein is adjudicatory in nature, there is no need for it to be delayed by the issuance of any public notice or receipt of comments prior to disposition. Indeed,

because TTI is not seeking the issuance of a tax certificate at this time, but only a declaratory ruling, there would be ample opportunity for any aggrieved party to seek reconsideration of any decision the Commission issues herein. (TTI does not believe that there would be any aggrieved party or any petition for reconsideration.)

Also, TTI cannot afford a "pyrrhic victory" of obtaining a favorable ruling only after an extended notice-and-comment period, when it is too late to help TTI timely raise equity capital for the Tampa wireless cable system. Therefore, TTI respectfully requests expeditious handling of this Petition.

DISCUSSION

III. With respect to Diversity of Voices, There Is No Difference between Cable and Wireless Cable Multichannel Video Programming Distributors.

As long ago as 1978, this Commission noted the significant under-representation of minority voices in the control and selection of audio and video programming for delivery to the home, and the need for adequate representation of minority viewpoints. As the Commission stated:

Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience.

Statement of Policy on Minority Ownership of Broadcast Facilities,
68 F.C.C.2d 979, 980-81 42 R.R.2d 1689 (1978) ("**1978 Policy Statement**"). The Commission later quoted the above language with approval when it noted the need for additional methods of

encouraging minority ownership in controlling programming choices in audio and video programming. See 1982 Policy Statement, supra, 92 F.C.C.2d at p.850.

In the 1982 Policy Statement, the Commission expanded the use of tax certificates as a vehicle to encourage minority ownership in broadcasting, including, among other things, the institution of a "seed money" tax certificate policy whereby seed money investors in a minority-controlled licensee would be entitled to tax certificates upon divestiture of their investment, so long as after divestiture the licensee would remain minority-controlled. See 1982 Policy Statement, supra, 92 F.C.C.2d at p.857-858. In that same year, the Commission extended its minority advancement policies, including the seed-money and other tax certificate policies, to franchised cable television systems, on the ground that cable systems perform the same type of functions for their subscribers as broadcast stations do for their viewers. See Cable Policy Statement, supra. The Commission therein set forth the relevant similarities:

[C]able television system operators may exercise discretion in determining which broadcast and non-broadcast signals they will carry, as well as in selecting pay programming from alternate sources. Additionally, they may engage in program origination. Because cable operators, like broadcasters, exercise discretion in their choice of programming, the Commission has taken steps, in the past, to maximize the diversity of programming carried by cable television systems.

[Citations and footnotes omitted.] Id.

Since that time, both this Commission and the Congress have recognized that wireless cable operators (including SMATV) perform

precisely the same functions for their subscribers as do franchised cable operators, and indeed, both the Commission and Congress have focused upon that similarity in deciding to promote the development of wireless cable as a marketplace means of holding down cable pricing while preserving programming quality. See, e.g., MDS Notice of Proposed Rulemaking in PR Docket No. 92-80, FCC 92-173 (released May 8, 1992) at ¶4 & n.9 and cases cited therein (as to Commission); Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385 (1992) and Conf.Rpt.No. 102-862 (as to Congress).⁴ Ipsso facto, a wireless cable operator provides similar functions for its subscribers as does a broadcaster for its viewers, and a wireless cable operator should be as much entitled to be subject to the benefits of the Commission's minority tax certificate policy as are franchised cable operators.⁵

⁴ The theme of promoting other facilities-based technologies such as wireless cable is woven throughout the 1992 Cable Act and its accompanying conference report. For example, a cable television operator is deemed to have "effective competition" if another "multichannel video programming distributor" has at least a 15% market share (Section 3), cable/MMDS cross-ownership is restricted (Section 11), and wireless cable access to programming from cable-owned programmers is afforded (Section 19). The Conference Report states, at page 93:

The conferees intend that the Commission should encourage arrangements which promote the development of new technologies providing facilities-based competition to cable

⁵ In point of fact, given the Commission's stated policy basis for maintaining a minority tax certificate policy respecting cable operators, coupled with the above-referenced Commission and Congressional acknowledgements that wireless cable is no different from cable with respect to its function as a facilities-based "multichannel video programming distributor", it would be a denial
(continued...)

Where, as here, there is every policy reason to treat wireless cable the same as cable, and no countervailing factors, the Commission should declare that the minority tax certificate policy is extended to wireless cable.

IV. For Tax Certificate Purposes, a Wireless Cable Operator Is the Entity Controlling the Programming Choices.

As discussed in Part III above, the tax certificate policy is an effort to increase minority voices and diversity in programming by increasing the number of programming distributors which are minority controlled. As noted above, it is precisely a cable operator's role as the selector of programming which justified the extension of the tax certificate policy to cable in Cable Policy Statement, supra. Patently then, in extending that same minority tax certificate policy to wireless cable, the wireless cable operator is the entity controlling the selection of system programming, whether or not that entity is the holder of any of the wireless cable system's MDS or OFS licenses. This is especially so where, as in Tampa and most wireless cable systems, the customer/programmer holds title to the transmitting equipment and leases it to the various FCC licensees.

⁵(...continued)
of equal protection for the Commission to decline to extend its minority tax certificate policy to wireless cable. Cf. Beach Communications, Inc. v. F.C.C., 965 F.2d 1103 (D.C.Cir., 1992), cert. granted sub nom. F.C.C. v. Beach Communications, Inc., 113 Sup.Ct.2d 594 (1992) (provision of Cable Communications Policy Act of 1984 which treated some private cable systems differently from others struck down under Fifth Amendment as denial of equal protection).

As the customer/programmer of the wireless cable system in Tampa, TTI is the entity for which minority control must be encouraged and for which tax certificate treatment made available. It would not advance any Commission policy to award a tax certificate to encourage minority control of an MDS licensee which is acting as a mere conduit in terms of programming choices. The Commission should declare that TTI, as the entity controlling the selection of programming, is the wireless cable operator in the context of the Tampa wireless cable system.

V. Seed Money Is Entitled to Tax Certificate Treatment Even if Invested Indirectly Via TTI-Parent.

The Commission should declare that tax certificates will be issued where the investment otherwise qualifies under the standards laid out in the 1982 Policy Statement even though the investment was (or will be) made indirectly into TWTV through its 100% parent, TTI-Parent, rather than directly into the subsidiary. First and foremost, the Commission's minority advancement policy is aided just as much when Mr. Crutchfield selects the programming choices through his control of TTI-Parent as it would be otherwise. If the policy is being advanced in toto, it would be arbitrary to refuse tax certificate benefits by exalting form over substance.

Moreover, the Commission has issued tax certificates in the past to cable investors upon divestiture, where those investors originally had contributed their seed money into a parent rather than directly into the cable operator. For example, in InterMedia Capital Mgmt. of Gainesville, L.P., (CSR-3728, released July 6,

1992), the Commission issued tax certificates to two such indirect investors. In that case, the franchised cable operator was named Melanie Cable Partners, L.P. ("Melanie"), which was owned 21% and controlled by its minority-controlled general partner, MMC, and owned 79% by its sole limited partner, IPG. The investors who received tax certificates were ICM and TCID, neither one of which had ever contributed any capital at all directly into Melanie.

However, both ICM and TCID had indirectly funded Melanie by contributing capital into Melanie's 79% parent, IPG. The Commission found that both ICM and TCID were entitled to tax certificates, holding:

It is clear that these petitioners provided necessary start-up financing to minority entities through capital contributions for partnership interests. They have furthered the Commission's policy of encouraging minority ownership of cable television systems. Issuance of the requested tax certificates, is, therefore, warranted.

Id. at page 2.

Based upon the InterMedia case, the Commission should likewise declare that contingent upon TTI remaining the Tampa wireless cable operator and remaining minority-controlled post-divestiture:

- a) Mr. Crutchfield will be entitled to a tax certificate when he divests the TTI-Parent stock he received for his capital invested to date;
- b) the former WCTV stockholders and debenture holders and former WCTV creditor Three Sixty Corp. will be entitled to tax certificates when they divest the stock they receive under and pursuant to the TWTW/WCTV Merger Agreement; and
- c) the initial holders of any new stock issued by TTI-Parent who pay cash into TTI-Parent for that newly-issued stock on or before December 2, 1993 (i.e., within one year of acquisition of the Tampa wireless

cable system), will be entitled to tax certificates upon divestiture.⁶

Each of these three categories of investors have (or will) increase TTI's overall equity capitalization and thereby increase the chances of TTI's Tampa wireless cable operation becoming viable and competitive. Therefore, each is entitled to tax certificate treatment, without regard to the fact that their respective investments, like those of ICM and TCID in the InterMedia case, were (or will be) made indirectly into TWTV via TTI-Parent.

CONCLUSION


This Commission should affirm its longstanding policy regarding tax certificates in applying its tax certificate policy to this hybrid cable/wireless cable operator whether or not the programmer is also an MDS or OFS licensee. It is in the public interest for the Commission to use its tax certificate policy to assist in making the minority-controlled hybrid cable/wireless cable system financially viable and competitive, by acting expeditiously to grant this petition for declaratory ruling and thereby enhance TTI's ability to attract seed money. Because TTI is a public company and needs substantial lead time to raise money in a manner consistent with SEC rules, the Commission is requested to act quickly in order to materially assist TTI in its public interest goals.

⁶ TTI seeks a declaratory ruling here only for the initial holders of newly-issued stock where those holders acquire that stock by paying new capital into TTI. TTI does not contend (and does not seek any ruling) that anyone acquiring existing TTI-Parent shares from existing TTI-Parent stockholders would be entitled to tax certificate treatment.

Wherefore, TTI respectfully requests that the Commission grant this Petition.

Respectfully submitted,

TRANSWORLD TELECOMMUNICATIONS, INC.
and
TRANSWORLD WIRELESS T.V. -
TAMPA BAY, INC.

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January 29, 1993

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CERTIFICATE OF SERVICE

I, JacLyn Freeman, do hereby certify that on January 29, 1993, I caused a copy of the foregoing "PETITION FOR DECLARATORY RULING REGARDING ISSUANCE OF TAX CERTIFICATES" to be hand delivered to each of the following:

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